

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Lavian	
Application No.: 09/747296	Group Art Unit: 2476
Filed: 12/22/2000	Examiner: Lee
Title: Dynamic Assignment of Traffic Classes to a Priority Queue in a Packet Forwarding Device	Confirmation No. 2616
Attorney Docket No.: 120-081	
Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	

PETITION FOR RECONSIDERATION OF HOLDING OF ABANDONMENT

AND

ALTERNATIVELY TO REVIVE APPLICATION FOR UNINTENTIONAL  
ABANDONMENT

Dear Sir:

On September 4, 2012 the Office sent a DECISION ON APPEAL affirming the rejections of claims 1 and 3-24 under 35 U.S.C. 103(a). Approximately one month later on October 5, 2012 the Office sent a NOTICE OF ABANDONMENT for failure to timely file a proper reply to the Office letter mailed on September 4, 2012, i.e., the DECISION ON APPEAL. Applicant respectfully asserts that the NOTICE OF ABANDONMENT was sent prematurely. As indicated in MPEP § 706.07(h), paragraph XI (interpreting, *inter alia*, 37 CFR 1.304 and 1.114):

The filing of an RCE (accompanied by the fee and a submission) after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit (Federal Circuit) or the commencement of a civil action in federal district court, will also result in the finality of the rejection or action being withdrawn and the submission being considered. Generally, the time period for filing a notice of appeal to the Federal Circuit or for commencing a civil action is within two months of the Board's decision. See 37 CFR 1.304 and MPEP § 1216. Thus, an RCE filed within this two month time period and before the filing of a notice of appeal to the Federal Circuit or the commencement of a civil action would be timely filed.

Because the NOTICE OF ABANDONMENT was sent less than two months after the DECISION ON APPEAL, the NOTICE OF ABANDONMENT was sent prematurely. An Amendment, RCE and the required fees are submitted contemporaneously with this Petition. Withdrawal of the holding of abandonment and continued prosecution are therefore requested.

In the event that the request to withdraw the holding of abandonment is denied, applicant respectfully petitions the Commissioner to revive the application under 37 CFR 1.137 (b). As indicated above, it is applicant's good faith belief that a reply filed within two months of the Decision On Appeal would be timely filed. For this and other reasons, the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. An Amendment, RCE and required fees are submitted contemporaneously with this Petition. The Commissioner is authorized to charge deposit account 502569 for the petition fee as set forth in § 1.17(m) and any other fees required to revive the application.

Respectfully Submitted,

November 1, 2012

Date

/Holmes W. Anderson/

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Docket No. 120-081  
Dd: 11/06/2009